

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 354

Introduced by Lautenbaugh, 18.

Read first time January 15, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Administrative Procedure Act; to amend
2 section 84-917, Reissue Revised Statutes of Nebraska;
3 to provide for cross-appeals in contested cases; and to
4 repeal the original section.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 84-917, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 84-917 (1) Any person aggrieved by a final decision in a
4 contested case, whether such decision is affirmative or negative in
5 form, shall be entitled to judicial review under the Administrative
6 Procedure Act. Nothing in this section shall be deemed to prevent
7 resort to other means of review, redress, or relief provided by
8 law.

9 ~~(2)(a)~~ (2)(a)(i) Proceedings for review shall be
10 instituted by filing a petition in the district court of the county
11 where the action is taken within thirty days after the service of
12 the final decision by the agency. All parties of record shall be
13 made parties to the proceedings for review. If an agency's only
14 role in a contested case is to act as a neutral factfinding body,
15 the agency shall not be a party of record. In all other cases, the
16 agency shall be a party of record. Summons shall be served within
17 thirty days of the filing of the petition in the manner provided
18 for service of a summons in section 25-510.02. If the agency whose
19 decision is appealed from is not a party of record, the petitioner
20 shall serve a copy of the petition and a request for preparation
21 of the official record upon the agency within thirty days of the
22 filing of the petition. The court, in its discretion, may permit
23 other interested persons to intervene.

24 (ii) The filing of a petition for review shall vest in a
25 responding party of record the right to a cross-appeal against any

1 other party of record. A respondent shall serve its cross-appeal
2 within thirty days after being served with the summons and petition
3 for review.

4 (b) A petition for review shall set forth: (i) The
5 name and mailing address of the petitioner; (ii) the name and
6 mailing address of the agency whose action is at issue; (iii)
7 identification of the final decision at issue together with a
8 duplicate copy of the final decision; (iv) identification of the
9 parties in the contested case that led to the final decision; (v)
10 facts to demonstrate proper venue; (vi) the petitioner's reasons
11 for believing that relief should be granted; and (vii) a request
12 for relief, specifying the type and extent of the relief requested.

13 (3) The filing of the petition or the service of summons
14 upon such agency shall not stay enforcement of a decision. The
15 agency may order a stay. The court may order a stay after notice
16 of the application therefor to such agency and to all parties of
17 record. If the agency has found that its action on an application
18 for stay or other temporary remedies is justified to protect
19 against a substantial threat to the public health, safety, or
20 welfare, the court may not grant relief unless the court finds
21 that: (a) The applicant is likely to prevail when the court
22 finally disposes of the matter; (b) without relief, the applicant
23 will suffer irreparable injuries; (c) the grant of relief to
24 the applicant will not substantially harm other parties to the
25 proceedings; and (d) the threat to the public health, safety, or

1 welfare relied on by the agency is not sufficiently serious to
2 justify the agency's action in the circumstances. The court may
3 require the party requesting such stay to give bond in such amount
4 and conditioned as the court may direct.

5 (4) Within thirty days after service of the petition
6 or within such further time as the court for good cause shown
7 may allow, the agency shall prepare and transmit to the court a
8 certified copy of the official record of the proceedings had before
9 the agency. Such official record shall include: (a) Notice of
10 all proceedings; (b) any pleadings, motions, requests, preliminary
11 or intermediate rulings and orders, and similar correspondence to
12 or from the agency pertaining to the contested case; (c) the
13 transcribed record of the hearing before the agency, including all
14 exhibits and evidence introduced during such hearing, a statement
15 of matters officially noticed by the agency during the proceeding,
16 and all proffers of proof and objections and rulings thereon;
17 and (d) the final order appealed from. The agency shall charge
18 the petitioner with the reasonable direct cost or require the
19 petitioner to pay the cost for preparing the official record for
20 transmittal to the court in all cases except when the petitioner is
21 not required to pay a filing fee. The agency may require payment or
22 bond prior to the transmittal of the record.

23 (5)(a) When the petition instituting proceedings for
24 review was filed in the district court before July 1, 1989, the
25 review shall be conducted by the court without a jury on the record

1 of the agency, and review may not be obtained of any issue that
2 was not raised before the agency unless such issue involves one of
3 the grounds for reversal or modification enumerated in subdivision
4 (6) (a) of this section. When the petition instituting proceedings
5 for review is filed in the district court on or after July 1, 1989,
6 the review shall be conducted by the court without a jury de novo
7 on the record of the agency.

8 (b) (i) If the court determines that the interest of
9 justice would be served by the resolution of any other issue not
10 raised before the agency, the court may remand the case to the
11 agency for further proceedings.

12 (ii) The agency shall affirm, modify, or reverse its
13 findings and decision in the case by reason of the additional
14 proceedings and shall file the decision following remand with
15 the reviewing court. The agency shall serve a copy of the
16 decision following remand upon all parties to the district court
17 proceedings. The agency decision following remand shall become
18 final unless a petition for further review is filed with the
19 reviewing court within thirty days after the decision following
20 remand being filed with the district court. The party filing the
21 petition for further review shall serve a copy of the petition for
22 further review upon all parties to the district court proceeding in
23 accordance with the rules of pleading in civil actions promulgated
24 by the Supreme Court pursuant to section 25-801.01 within thirty
25 days after the petition for further review is filed. Within thirty

1 days after service of the petition for further review or within
2 such further time as the court for good cause shown may allow, the
3 agency shall prepare and transmit to the court a certified copy of
4 the official record of the additional proceedings had before the
5 agency following remand.

6 (6) (a) When the petition instituting proceedings for
7 review was filed in the district court before July 1, 1989, the
8 court may affirm the decision of the agency or remand the case for
9 further proceedings, or it may reverse or modify the decision if
10 the substantial rights of the petitioner may have been prejudiced
11 because the agency decision is:

12 (i) In violation of constitutional provisions;

13 (ii) In excess of the statutory authority or jurisdiction
14 of the agency;

15 (iii) Made upon unlawful procedure;

16 (iv) Affected by other error of law;

17 (v) Unsupported by competent, material, and substantial
18 evidence in view of the entire record as made on review; or

19 (vi) Arbitrary or capricious.

20 (b) When the petition instituting proceedings for review
21 is filed in the district court on or after July 1, 1989, the court
22 may affirm, reverse, or modify the decision of the agency or remand
23 the case for further proceedings.

24 (7) The review provided by this section shall not be
25 available in any case where other provisions of law prescribe the

1 method of appeal.

2 Sec. 2. Original section 84-917, Reissue Revised Statutes

3 of Nebraska, is repealed.